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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2015-0037; FRL-9922-87-Region 9]**

**Revisions to the California State Implementation Plan, Butte  
County Air Quality Management District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Butte County Air Quality Management District's (BCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compounds (VOCs), oxides of nitrogen (NOx), and particulate matter (PM) emissions from open burning. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by **[Insert date 30 days after the date of publication in the Federal Register]**.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2015-0037, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to

consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Rynda Kay, EPA Region IX, (415) 947-4118, [Kay.Rynda@epa.gov](mailto:Kay.Rynda@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

## Table of Contents

### I. The State's Submittal.

- A. What rule did the State submit?
- B. Are there other versions of this rule?
- C. What is the purpose of the submitted rule revision?

## II. EPA's Evaluation and Action.

- A. How is EPA evaluating the rule?
- B. Does the rule meet the evaluation criteria?
- C. What are the deficiencies in the rule?
- D. EPA recommendations to further improve the rule.
- E. Public comment and proposed action.

## III. Statutory and Executive Order Reviews.

### I. The State's Submittal.

#### A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

Table 1 - Submitted Rule

Local Agency	Rule #	Rule Title	Amended	Submitted
BCAQMD	300	Open Burning	02/24/11	09/21/12

On October 11, 2012, EPA determined that the submittal for BCAQMD Rule 300 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

#### B. *Are there other versions of this rule?*

There is no previous version of Rule 300 in the California SIP. BCAQMD previously adopted Rules 301 - 325 for open burning

which were approved by the EPA for inclusion into the California SIP in 1987. BCAQMD later consolidated these rules locally into Rule 300. On February 24, 2011, BCAQMD updated the open burning requirements in Rule 300 and CARB submitted the rule to us on October 21, 2012. This rule would supersede the BCAQMD rules currently in the California SIP as listed below.

Table 2 - Rules to be Superseded

<b>Rule</b>	<b>Title</b>	<b>SIP Approval Date</b>	<b>FR Citation</b>
301	Prohibitions on Open Burning	February 3, 1987	52 FR 3226
302	Exemptions to Rule 301	February 3, 1987	52 FR 3226
303	Burn Permits	February 3, 1987	52 FR 3226
304	Exemptions to Rule 303	February 3, 1987	52 FR 3226
306	Information Furnished by Permit Applicant	February 3, 1987	52 FR 3226
307	Ignition Hours	February 3, 1987	52 FR 3226
308	Notice of Intent to Ignite	February 3, 1987	52 FR 3226
309	Freedom from Debris and Moisture	February 3, 1987	52 FR 3226
310	Arrangement of Agricultural and Wood Waste	February 3, 1987	52 FR 3226
311	Drying Period	February 3, 1987	52 FR 3226
312	Wind Direction	February 3, 1987	52 FR 3226
313	Ignition Devices	February 3, 1987	52 FR 3226

314	Burning of Vines or Bushes Treated with Herbicides	February 3, 1987	52 FR 3226
315	Rice Straw Burning	February 3, 1987	52 FR 3226
316	Field Crop Ignition	February 3, 1987	52 FR 3226
317	Field Crops Harvested Prior to September 10	February 3, 1987	52 FR 3226
318	Restriction of Burning During Poor Air Quality Conditions	February 3, 1987	52 FR 3226
320	Certificate from Department of Fish and Game	February 3, 1987	52 FR 3226
322	Special Permit	February 3, 1987	52 FR 3226
323	Range Improvement Burning	February 3, 1987	52 FR 3226
324	Burning at Disposal Sites	February 3, 1987	52 FR 3226
325	Exemption to Rule 324	February 3, 1987	52 FR 3226

C. *What is the purpose of the submitted rule?*

Open burning emits PM, including particulate matter of ten microns or less (PM<sub>10</sub>) and particulate matter of 2.5 microns or less (PM<sub>2.5</sub>), directly, as well as VOCs and NO<sub>x</sub>, which are precursors to ozone and PM<sub>2.5</sub>. VOCs help produce ground-level ozone and smog, which harm human health and the environment. NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. PM contributes to effects that are harmful to human health and the

environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems.

Section 110(a) of the CAA requires States to submit regulations that control VOC, NO<sub>x</sub>, and PM emissions. Rule 300 is designed to minimize the impacts of smoke and other air pollutants generated by open burning. EPA's technical support document (TSD) has more information about this rule.

## **II. EPA's Evaluation and Action.**

### *A. How is EPA evaluating the rule?*

Generally, SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(1)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

In PM<sub>2.5</sub> nonattainment areas classified as moderate, the SIP must include Reasonably Available Control Measures (RACM) (see CAA section 189(a)(1)). BCAQMD regulates the Chico nonattainment area in Butte County, which is classified as moderate for the 2006 24-hour PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) (40 CFR 81.305). On September 10, 2013 (78 FR 55225), EPA

issued a determination that the area had attained the 2006 24-hour  $PM_{2.5}$  standard based on complete, quality-assured, and certified ambient air monitoring data for the 2010–2012 monitoring period. Under EPA's Clean Data Policy and the regulations that embody it, 40 CFR 51.1004(c) (for  $PM_{2.5}$ ), an EPA determination that an area is attaining the relevant standard suspends the area's obligations to submit RACM for as long as the area continues to attain. Therefore, BCAQMD is not currently required to implement RACM for  $PM_{2.5}$ . If the Chico nonattainment area is redesignated to attainment, RACM requirements for  $PM_{2.5}$  will no longer apply.

BCAQMD also regulates the Chico ozone nonattainment area, which is classified as marginal under the 1997 and 2008 NAAQS.<sup>1</sup> CAA sections 172(c)(1) and 182 require implementation of RACM for moderate and above ozone areas, but not for marginal areas. Therefore, BCAQMD is not subject to RACM requirements with respect to ozone.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

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<sup>1</sup> On December 3, 2012 (77 FR 71551), EPA determined that Chico nonattainment area had attained the 1997 8-hour ozone NAAQS by the applicable attainment date, and that it continued to attain the 1997 standard based upon complete quality-assured data for 2009–2011.



1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

B. *Does the rule meet the evaluation criteria?*

We believe this rule is largely consistent with the relevant policy and guidance regarding enforceability, stringency, and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. *What are the deficiencies in the rule?*

BCAQMD Rule 300 contains two provisions which do not meet the evaluation criteria concerning enforceability and preclude full SIP approval. The provisions allow the Air Pollution Control Officer (APCO) to independently interpret the SIP

without explicit and replicable procedures within the rule to tightly define how the discretion is exercised to assure equivalent emission reductions and without explicit approval of such discretion provisions by the EPA (Little Blue Book, page 17; see also 52 FR 45044, 45109 (November 24, 1987)).

1. Sections 5.53 and 6.5 prohibit burning of rubbish or garbage except under variance by the hearing board as follows:

"5.53 Variance: Temporary exemption from DISTRICT rules or regulations granted to sources by the DISTRICT Hearing Board.

6.5 It is unlawful to burn rubbish or garbage at dumps, landfills, or refuse disposal areas, or at any solid waste dump, whether public or private, or to burn garbage anywhere else in the County of Butte, except under variance."

2. Sections 8.24 allows the APCO to waive drying time requirements:

"8.2.4 The drying time requirements stated in Sections 8.2.1 and 8.2.2 may be waived by the APCO for good cause at the discretion of the APCO. The adequacy of cause to waive the drying time requirements shall be decided on a case-by-case basis by the APCO."

D. *EPA recommendations to further improve the rule.*

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

E. *Public comment and proposed action.*

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the disapproval. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the 2-year clock for the federal implementation plan (FIP) requirement under section 110(c).

Note that the submitted rule has been adopted by the BCAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo titled "Processing of State

Implementation Plan (SIP) Submittals."

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

### **III. Statutory and Executive Order Reviews.**

#### *A. Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

#### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b).

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the

Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because EPA's proposed limited approval/limited disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a) (2).

*D. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves

the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve or disapprove a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175, Coordination with Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

*G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive



Order 13045, because it proposes to approve a State rule implementing a Federal standard.

*H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: January 23, 2015.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

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